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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **(SOUTHERN DIVISION)**

13 **JOSHUA EDIN and CAROLYN**  
14 **GIANDONATO**, individually and on  
behalf of themselves and all others  
15 similarly situated,

16 Plaintiffs,

17 v.

18 **BSH HOME APPLIANCES**  
19 **CORPORATION d/b/a BOSCH,**

20 Defendant.  
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Case No.:

**Jury Trial Demanded**

**CLASS ACTION COMPLAINT**

1 **CLASS ACTION COMPLAINT**

2 Plaintiffs Joshua Edin and Carolyn Giandonato (“Plaintiffs”), by and through  
3 undersigned counsel, on behalf of themselves and all others similarly situated, bring this  
4 Class Action Complaint against BSH Home Appliances Corporation d/b/a Bosch  
5 (“Defendant” or “Bosch”) and in support allege, based upon personal knowledge and  
6 belief as to their own acts and based on the investigation to date of their counsel, as  
7 follows:

8 **NATURE OF ACTION**

9 1. Bosch is one of the largest technology companies in the world. It  
10 participates in the design, manufacture and sale of a variety of technological products,  
11 including kitchen appliances such as microwaves.

12 2. Bosch’s kitchen appliance portfolio includes multiple types of microwaves,  
13 including microwave drawers, which are the subject of this action. Over the course of  
14 several decades, Bosch has gained the trust of consumers, who reasonably believe that  
15 Bosch products are made with quality materials, and that the Bosch products can be  
16 used safely, as intended.

17 3. Bosch’s microwave drawers are intended by Bosch to be installed within  
18 kitchen islands, under countertops, or adjacent to wall ovens.<sup>1</sup> On its website, Bosch  
19 describes its microwave drawers as “a perfect solution for any *designer* kitchen, and “a  
20 great option when installed under counter in an island, freeing up space elsewhere in  
21 the kitchen.” [Emphasis Added].<sup>2</sup> Bosch further touts the microwave drawers as having  
22 the ability to open and close “With the Push of a Button” and as having a “Sleek, Low  
23

24 \_\_\_\_\_  
25 <sup>1</sup>[https://www.bosch-home.com/us/productslist/cooking-](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/drawer-microwaves/HMD8451UC#/Togglebox=-582378998/Togglebox=-960854172/)  
26 [baking/microwaves/drawer-microwaves/HMD8451UC#/Togglebox=-](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/HMD8451UC#/Togglebox=-582378998/Togglebox=-960854172/)  
27 [582378998/Togglebox=-960854172/](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/HMD8451UC#/Togglebox=-582378998/Togglebox=-960854172/) (last accessed March 23, 2020).

28 <sup>2</sup> <https://www.bosch-home.com/us/products/cooking-baking/microwaves> (last  
accessed March 23, 2020).

1 Profile Design [that] Can Be Installed Flush to Cabinets.”<sup>3</sup> Below is an exemplar  
2 photograph of a Bosch microwave drawer:<sup>4</sup>



15 4. Bosch offers two models for its microwave drawers: HMD8451UC and  
16 HMD8053UC (collectively, the “Microwaves” or the “Products”). The designs of these  
17 Microwaves are substantially similar.<sup>5</sup> Accordingly, each model is the subject of this class  
18 action lawsuit.

19 5. The cost of the Microwaves ranges between \$1,499.00 and \$1,599.00  
20 MSRP.  
21

22  
23 <sup>3</sup>[https://www.bosch-home.com/us/productslist/cooking-](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/drawer-microwaves/HMD8451UC#/Togglebox=-582378998/Togglebox=-960854172/)  
24 [baking/microwaves/drawer-microwaves/HMD8451UC#/Togglebox=-](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/HMD8451UC#/Togglebox=-582378998/Togglebox=-960854172/)  
25 [582378998/Togglebox=-960854172/](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/HMD8451UC#/Togglebox=-582378998/Togglebox=-960854172/) (last accessed March 23, 2020).

26 <sup>4</sup><https://www.bosch-home.com/us/products/cooking-baking/microwaves> (last  
27 accessed March 23, 2020).

28 <sup>5</sup> <https://www.bosch-home.com/us/products/product-comparison> (last accessed  
March 23, 2020).

1           6. The Microwaves all contain a defect, described in more detail *supra*, that  
2 makes them unreasonably dangerous, as they are susceptible to catching fire, and  
3 unsuitable for their intended use. More specifically, the Microwaves are defectively  
4 designed and/or manufactured such that, under normal and intended use, the  
5 electromagnetic waves generated by the magnetron tube are unable to properly move  
6 through the waveguide into the cooking cavity, resulting in buzzing, smoking,  
7 overheating, and eventual destruction of the magnetron, leading to scorching of the  
8 waveguide.

9           7. Accordingly, the Microwaves are unreasonably dangerous and not fit for  
10 household use.

11           8. The defect and resulting damage to the Microwaves are not a result of  
12 overcooking or prolonged heating by the owner. It can take as few as 30 seconds for  
13 the magnetron tube to overheat, scorch the back panel of the Microwaves, produce  
14 smoke, and fail altogether. Oftentimes the failure occurs after fewer than 10-20 uses.

15           9. Bosch has undertaken a deliberate and willful pattern of conduct (including  
16 taking active measures) aimed at concealing the Microwave defect from its consumers,  
17 including the Plaintiffs.

18           10. At all relevant times, Bosch knew or should have known about the defect  
19 but nevertheless marketed, advertised, and sold the Microwaves without warning  
20 consumers that the Microwaves are likely to overheat and could result in buzzing,  
21 overheating of the magnetron, scorching of the waveguide, smoking, and ultimate  
22 failure.

23           11. Bosch fails to disclose the known defect or to provide consumers with a  
24 non-defective replacement product after their Microwave has failed as a result of the  
25 defect. Indeed, rather than providing consumers with new, non-defective Microwaves  
26 after their Microwaves overheated or failed as a result of the defect, Bosch either replaces  
27 each defective Microwave with another defective Microwave, provides a new magnetron  
28

1 that fails to remedy the problem, or improperly denies the warranty claim.

2 12. The replacement Microwaves and replacement of the magnetron also fails,  
3 or is likely to fail in the same manner, leaving consumers fearful of additional smoke and  
4 fire caused by the Microwaves, and with Microwaves that do not function as intended

5 13. As a direct and proximate result of Bosch's concealment of the defect, its  
6 failure to warn customers about the defect before their purchase of the Microwaves, and  
7 its failure to recall the Product or remedy the defect, Plaintiffs and other similarly  
8 situated customers ("Class" or "Class Members") purchased and used Bosch's defective  
9 Microwaves when they otherwise would not have made such purchases or would not  
10 have paid as much for the defective Microwaves.

11 14. Plaintiffs' and putative Class Members' Microwaves have failed (or are  
12 likely to fail) as a result of the defect when Plaintiffs and Class Members use the  
13 Products as intended, resulting in damage to the Microwaves and other property,  
14 including smoke damage to cabinetry, kitchen islands and peninsulas, and other interior  
15 parts of their homes, and the loss of meals prepared in the Microwaves.

16 15. Plaintiffs and all putative Class Members' Microwaves contain the same  
17 defect at the point of sale, pose substantially the same safety risk to Plaintiffs, Class  
18 Members, consumers, and the public. Bosch's Microwaves cannot be used safely for  
19 their intended purpose of preparing meals at home.

20 **PARTIES**

21  
22 16. Plaintiff Joshua Edin is a resident and citizen of Princeton, Minnesota.

23 17. Plaintiff Giandonato is a resident and citizen of Cape Coral, Florida.

24 18. Defendant BSH Home Appliances Corporation is a Delaware corporation  
25 with its principal place of business and headquarters located in Irvine, Orange County,  
26 California. Upon information and belief, Bosch's deceptive marketing and advertising  
27 campaign originated out of its Irvine, California offices.

1 19. Bosch distributes and markets and directs the marketing of the Microwaves  
2 in California, and throughout the United States.

3  
4 **JURISDICTION AND VENUE**

5 20. This Court has subject matter jurisdiction over this action pursuant to 28  
6 U.S.C. § 1332(d) because: (1) there are one hundred or more (named or unnamed) class  
7 members, (2) there is an aggregate amount in controversy exceeding \$5,000,000.00,  
8 exclusive of interest and costs, and (3) there is minimal diversity because Plaintiffs and  
9 Defendant are citizens of different States. This Court also has supplemental jurisdiction  
10 over the state law claims pursuant to 28 U.S.C. § 1367.

11 21. This Court may exercise personal jurisdiction over Defendant because  
12 Defendant does substantial business in this State and within this District, receives  
13 substantial compensation and profits from the marketing, distribution, and sales of  
14 products in this District, and has engaged in the unlawful practices described in this  
15 Complaint in this District.

16 22. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a  
17 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in  
18 this District.

19 **COMMON FACTUAL ALLEGATIONS**

20 23. Microwave ovens have been ubiquitous in American kitchens for several  
21 decades. Consumers have become accustomed to the simplicity and quick cooking that  
22 microwave ovens provide, and rely upon manufacturers, including Bosch, to ensure their  
23 safe and efficient use.

24 24. Bosch was founded in Stuttgart, Germany in 1886, and by 1929 had more  
25 than 10,000 employees and operated worldwide in the motor vehicle and industrial  
26

1 technology.<sup>6</sup> Following the Great Depression, Bosch sought to explore new business  
2 areas, including “affordable electric home appliances, which had previously only been  
3 found in large households and commercial operations.”<sup>7</sup>

4 25. By 1952 Bosch introduced its first “kitchen machine,” and twenty years  
5 later, in 1973, Bosch introduced its first microwave oven.<sup>8</sup> Bosch boasts that “the first  
6 built-in cooker with integrated microwave and multipurpose oven and self-cleaning  
7 technology was made by” Bosch.<sup>9</sup> Naturally, Bosch became a household name, and one  
8 in which consumers have relied on for the safety and quality of microwave ovens for  
9 more than 45 years.

10 26. By 2014, Bosch had expanded its microwave sales to microwave oven  
11 drawers. Currently, Bosch is engaged in, or otherwise participates in the business of  
12 designing, manufacturing, warranting, marketing, advertising, distributing, and selling  
13 the Microwaves. Each of the Microwaves is branded with the “Bosch” logo or, upon  
14 information and belief, can otherwise be readily identified as being a Bosch product.<sup>10</sup>

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22 <sup>6</sup> <https://www.bosch-home.com/us/experience-bosch/history> (last accessed on  
23 March 23, 2020).

24 <sup>7</sup> *Id.*

25 <sup>8</sup> *Id.*

26 <sup>9</sup> *Id.*

27 <sup>10</sup> [https://www.bosch-home.com/us/productslist/cooking-  
28 baking/microwaves/drawer-microwaves?pageNumber=1](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/drawer-microwaves?pageNumber=1) (last accessed on March 23,  
2020).





27. Consumers reasonably expect that the Microwaves are intended by Bosch to be used for safe food preparation up to 950 watts.

28. Microwaves are high voltage appliances that are a considerable electrical hazard if they are defectively designed or manufactured.

29. Each Microwave contains a magnetron, which is powered by a high voltage transformer, generating the electromagnetic energy waves (“electromagnetic energy” or “waves”) in the Microwaves. The magnetron is a vacuum tube device that generates the energy needed to heat food within the microwave. In other words, when a consumer cooks food in a microwave oven, the magnetron takes electricity from the power outlet and converts it into high-powered radio waves that are transmitted down a waveguide.

30. The waveguide directs the radio waves generated by the magnetron from one end of the waveguide to the other end and into the cooking cavity. The waves enter the cooking cavity and are directed and distributed throughout the cooking cavity by a mode stirrer. The purpose of the mode stirrer is to ensure the waves are distributed



1 throughout the cooking cavity so that the food is evenly cooked. A mode stirrer is  
2 utilized in microwaves that do not have a carousel to move the waves throughout the  
3 food.

4 31. Each of the Bosch-branded Microwaves contains a defect that prevents the  
5 waves from properly moving through the waveguide into the cooking cavity due to  
6 improperly sized and configured components. More specifically, the electromagnetic  
7 energy that originates from the magnetron tube becomes obstructed or disturbed while  
8 moving through the waveguide. This obstruction or disturbance prevents a substantial  
9 portion of the energy from being properly guided into the cooking cavity.

10 32. The obstruction or disturbance in the electromagnetic energy's movement  
11 down the waveguide causes the energy that is not transmitted to the cooking cavity to  
12 arc and otherwise concentrate near the magnetron, burning the waveguide and causing  
13 the magnetron tube to overheat. As a result of the overheating, the magnetron tube  
14 anode terminal (the top of the magnetron tube) melts and the waveguide is scorched.

15 33. The hot spot is consistent with a faulty design, in which the magnetron,  
16 the waveguide, and its load (the food) are not properly matched to one another in size  
17 and/or ratio, resulting in premature failure of the magnetron tube.

18 34. The nature of customer and technician descriptions of the failures, as well  
19 as burn patterns in the Microwaves, are consistent with premature failure of the  
20 magnetron and an increased Voltage Standing Wave Ratio ("VSWR").

21 35. Waveguide problems, such as localized energy disturbances, are consistent  
22 with an increased VSWR.

23 36. Further, the Microwaves are designed and marketed as having 950 watts  
24 operational capacity; however, due to the obstruction or disturbance in the transmission  
25 of the energy to the cooking cavity, the Microwaves operate at a maximum of only 750  
26 watts.

37. While microwave drawers have only been on the market for approximately 20 years, successful alternative designs for the manufacture of microwaves that utilize magnetron/waveguide/mode stirrer technology have existed since the 1970s, including alternative designs utilized by one of Bosch's competitors, Amana.

38. Nonetheless, the Microwaves lack an appropriate safety mechanism to prevent the components from overheating, and causing smoke, burning, and premature failure.

39. Bosch expressly and impliedly warrants, via user manuals, advertisements, pamphlets, brochures, circulars, samples, and/or models, that the Microwaves are fit for the ordinary purpose for which they are sold.

40. Bosch expressly warrants in its User and Care Manuals that the Microwaves are free from defect for one year.

41. It is generally recognized modern microwaves should last between 9-12 years, and certainly longer than one year.<sup>11</sup>

42. Bosch's Limited Product Warranty further provides:

BSH warrants that the Product is free from defect in materials and workmanship for a period of twelve (12) months from the date of purchase. The foregoing timeline begins to run upon the date of purchase, and shall not be stalled, tolled, extended, or suspended, for any reason whatsoever.

#### Repair/Replace as Your Exclusive Remedy

During this warranty period, BSH or one of its authorized service providers will repair your Product without charge to you (subject to

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<sup>11</sup> <https://www.consumerreports.org/cro/news/2009/03/by-the-numbers-how-long-will-your-appliances-last-it-depends/index.htm>; <https://brightnest.com/posts/6-signs-you-need-to-dump-your-microwave>; <https://www.thekitchn.com/6-signs-its-time-to-replace-your-microwave-228769>; <https://www.hunker.com/12003628/what-is-the-average-lifetime-of-microwave-ovens> (last accessed September 27, 2019).

1 certain limitations stated herein) if your Product proves to have been  
2 manufactured with a defect in materials or workmanship. If reasonable  
3 attempts to repair the Product have been made without success, then BSH  
4 will replace your Product (upgraded models may be available to you, in  
5 BSH's sole discretion, for an additional charge). All removed parts and  
6 components shall become the property of BSH at its sole option. All  
7 replaced and/or repaired parts shall assume the identity of the original  
8 part for purposes of this warranty and this warranty shall not be extended  
9 with respect to such parts. BSH's sole liability and responsibility hereunder  
10 is to repair manufacturer- defective Product only, using a BSH-authorized  
11 service provider during normal business hours.

12 43. The Warranty fails of its essential purpose for the following reasons:

- 13 (a) Bosch fails to disclose its knowledge of the defect when contacted by  
14 customers about Microwave failures;
- 15 (b) Bosch consistently replaces the magnetron with another magnetron  
16 and without remedying the actual defect or replacing the Microwave  
17 with a non-defective Microwave, and without extending the length of  
18 the Warranty; and
- 19 (c) Microwaves that are replaced under the terms of the Warranty are also  
20 replaced with defective Microwaves.

21 44. As described herein, Bosch breached this warranty at the time it shipped  
22 the Microwaves (and at the point of sale to consumers) because, the Microwaves were  
23 defective when they came off of the assembly line. Thus, at the time the defective  
24 Microwaves were shipped and sold to consumers, Bosch was in violation of the express  
25 warranty.

26 45. Further, because Bosch does not have non-defective Microwaves available  
27 to replace the defective Microwaves, and because its repairs are simply a band-aid that  
28 do not resolve the defect, it is unable to fulfill its warranty obligations at the point of  
purchase, or anytime thereafter, and the warranty is therefore breached immediately  
upon purchase.

46. In addition, the Warranty is unconscionable as follows:

- (a) In its limitation to the first owner without transferability;
- (b) In the one-year time limitation when the latent defect often does not manifest until after the expiration of the limitation;
- (c) In the failure and refusal to extend the time limitation at the time a replacement part is installed;
- (d) In its attempt to restrict tolling of the one-year time limitation;
- (e) In its attempt to confiscate and spoliage evidence by purportedly reserving the right to retain all removed components and parts during a repair;
- (f) In its disclaimer of warranties; and
- (g) In its limitation of remedies, including disclaimer of consequential damages.

47. The Warranty is further unconscionable given Bosch's knowledge of the defect, the existence of the defect at the point of sale, Bosch's failure to disclose the defect at the time of sale and during warranty communications, and in the premature failure of the Microwaves.

48. The defect renders the Microwaves unfit for the ordinary purpose for which they are used, which is to safely heat food at up to 950 watts.

49. As a result of the defect, the Microwaves pose an unreasonable risk of harm to consumers and their property, and are subject to premature failure

50. Had Plaintiffs, Class Members, and the consuming public known that the Microwaves were defective, posed an unreasonable risk of harm to themselves and their property, and would cause damage, they would not have purchased the Microwaves at all, or at the price they paid.

51. In sum, Bosch has actively concealed the existence and nature of the defect from Class Members, despite its knowledge of the existence and pervasiveness of the

defect, and certainly well before Plaintiffs and Class members purchased the Microwaves and during warranty communications. Specifically, Bosch has:

- a. Failed to disclose the defect to consumers, at or after the time of purchase, including when consumers make warranty claims or otherwise complain to Bosch about the defect;
- b. Actively concealed the defect from consumers, at or after the time of purchase, including when consumers make warranty claims, or otherwise complain to Bosch about the defect;
- c. Failed to disclose, and actively concealed the defect from consumers, including that the Microwaves were not fit for their intended purpose;
- d. Failed to disclose and actively concealed the defect from consumers when it improperly and unlawfully denied valid warranty claims;
- e. Failed to disclose and actively concealed the defect from consumers when it provided them with replacement Microwaves that contained the same or similar safety defect; and
- f. Failed to disclose and actively concealed the defect from consumers when it provided them with replacement magnetron tubes, without remedying the actual defect, and when it knew the Microwave would fail again.

52. As a direct, proximate, and foreseeable result of the defect, Plaintiffs and Class Members suffered damages, including but not limited to: (a) the difference in value of the Microwaves as purchased and the Microwaves received; (b) loss of use of the Microwaves; (c) property damage; and (d) consequential damage.

### **PLAINTIFFS' FACTS**

#### ***Plaintiff Joshua Edin's Experience***

53. In November of 2016, Plaintiff Joshua Edin purchased a Bosch-branded Microwave Oven Drawer, Model Number HMD8451UC from Amazon.com as part of

1 a kitchen remodel. Plaintiff paid \$1,254.10 for the Microwave. Plaintiff purchased the  
2 Microwave for normal, household (non-commercial) use, and has in fact at all times only  
3 been used for normal household purposes.

4 54. Mr. Edin and his wife selected the Bosch Microwave based on the Bosch  
5 name, Bosch's reputation, and the design of the Microwave to fit in the kitchen island,  
6 under the countertop. When Mr. Edin selected the Microwave, he expected it would  
7 last many years, and would not prematurely fail and pose a fire hazard to his home and  
8 family.

9 55. Shortly after his purchase, the Microwave was installed in Mr. Edin's  
10 kitchen, and he began to use it. From the time of purchase until the incident described  
11 below, Mr. Edin used the Microwave as intended, cleaning it appropriately, and  
12 maintaining it in a reasonable manner as an owner of an appliance.

13 56. On September 22, 2019, Mr. Edin was melting butter for approximately 30  
14 seconds when the Microwave made clicking and other noises that sounded like an  
15 electrical fire. He immediately turned the Microwave off. When he opened the drawer,  
16 electrical type smoke began billowing out of the cooking cavity. As the smoke had  
17 contaminated his food, Mr. Edin was forced to dispose of it.

18 57. Upon disassembly and inspection of microwave, it was discovered the  
19 magnetron tube had been burned and portions of the waveguide were also charred.  
20 Shortly after the incident, Mr. Edin ordered a new magnetron to replace the damaged  
21 magnetron.

22 58. As the magnetron is not the defective component, the replacement  
23 magnetron has not fixed the defect and the Microwave will likely fail again in the  
24 foreseeable future.

25 59. After this smoking event occurred, Mr. Edin performed research online  
26 and discovered numerous other consumers reporting the same or similar incidences of  
27 arcing and failure.



1           60. Because Bosch unlawfully concealed the defect from Mr. Edin before his  
2 purchase, as well as after the Microwave was installed in his home and being used, he  
3 did not suspect (and had no reason to suspect) that there was anything wrong with his  
4 Microwave until the defect manifested.

5           61. Mr. Edin's Microwave has not operated safely for its life expectancy. Had  
6 he known of the defect, he would have either not purchased the Microwave or would  
7 have paid less than he did. Therefore, he did not receive the benefit of his bargain.

8                           *Plaintiff Carolyn Giandonato's Experience*  
9

10           62. In April of 2015, Plaintiff Carolyn Giandonato purchased a Bosch-branded  
11 Microwave Oven Drawer, Model Number HMD8451UC, from Bill Smith Appliances  
12 & Electronics in Ft. Meyers, Florida. Ms. Giandonato paid \$1,196.00 for the Microwave.  
13 She purchased the Microwave for normal, household (non-commercial) use, and has in  
14 fact at all times only been used for normal household purposes.

15           63. Ms. Giandonato purchased the Microwave based on the Bosch name and  
16 its reputation. When Ms. Giandonato selected the Microwave, she expected it would  
17 last many years, and would not prematurely fail and pose a fire hazard to her home and  
18 family.

19           64. Shortly after her purchase, the Microwave was installed in Ms.  
20 Giandonato's kitchen, and she began to use it. From the time of purchase until the  
21 incident described below, she used the Microwave as intended, cleaning it appropriately,  
22 and maintaining it in a reasonable manner as an owner of an appliance. Ms. Giandonato  
23 also completed and returned her Bosch product registration card.

24           65. Following her purchase, Ms. Giandonato's Microwave has frequently made  
25 odd clicking noises while heating food. Such noises are associated with arcing inside of  
26 the Microwave, and evidence that her Microwave possesses the defect and will likely fail  
27 in the foreseeable future.



72. Bosch's actual knowledge of the defect is evidenced by consumer complaints under reviews for the Microwaves on its own website, as well as other consumer websites.

73. The complaints on its own website demonstrate that Bosch is aware of the dangerous and potentially harmful defect and has not taken any steps to remedy the dangerous defect or recall the Microwaves.

74. Years of customer complaints are also available online regarding the Microwaves. For example, consumers noted:

From one verified Amazon reviewer on April 24, 2017 (HMD8451UC):<sup>12</sup>

looks good, worked for about a month- then started banging and smoking! And WORSE Bosch REFUSED to replace it even though the Bosch technician, which took 3 months to come see it, said it was a factory DEFAULT! After Bosch jerked me around asking for this and that invoice and proof I bought it- they then finally said that this DEALER is not authorized to sell Bosch and REFUSED to do anything about it! BEWARE

From Betsy in or about the fall of 2018 (HMD8451UC):<sup>13</sup>

I have had this for less than a year, and the magentron melted sending smoke into my kitchen after a 2 minute usage. I've been waiting a month for a replacement....Looks great in my kitchen, but it unusable.

From Unhappy Bosch customer in or about the summer of 2019 (HMD8451UC):<sup>14</sup>

<sup>12</sup> [https://www.amazon.com/product-reviews/B00J58TDQA/ref=acr\\_dp\\_hist\\_1?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews#reviews-filter-bar](https://www.amazon.com/product-reviews/B00J58TDQA/ref=acr_dp_hist_1?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews#reviews-filter-bar) (last accessed September 30, 2019).

<sup>13</sup> <https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/drawer-microwaves/HMD8451UC#/Tabs=section-reviews/> (last accessed September 30, 2019).

<sup>14</sup> *Id.*

1 Do not buy Bosch if you expect a good experience with any customer  
 2 service needs. At the end of 2017 I renovated my kitchen and purchased  
 3 all Bosch appliances. In May 2019 the magnetron of my microwave failed.  
 4 Granted, it was now out of warranty, but why the magnetron should have  
 5 failed so soon was unimaginable. The Bosch microwave I replaced had  
 6 worked seamlessly for 30 years. The repair cost me almost \$400 (the  
 7 microwave was \$1200). I contacted Bosch by email and by phone and was  
 8 told there was nothing they could do in consideration of this premature  
 9 (my word) need for such a repair. Perhaps it might have been different if  
 10 I had reported this prior to authorizing the repair (I did use the "preferred"  
 11 repair service on the Bosch website). How was I to know that?! I told the  
 12 supervisor I spoke with, as well as the customer service rep that emailed  
 13 me, that they could expect poor reviews posted on as many websites as I  
 14 could find. No one seemed to care. Buy these appliances at your own peril.

15 From another verified Amazon reviewer on February 8, 2019 (HMD8451UC):<sup>15</sup>

16 I had this microwave installed for just over one month when it self-  
 17 immolated (electrical fire). Do some research and you'll find that virtually  
 18 all drawer microwaves on the market are made by Bosch, and they all have  
 19 a similar failure mode, with smoke and fire. It's amazing this product is  
 20 still on the market.

21 75. For over three years, consumers have reported that the Microwaves  
 22 stopped heating food altogether, or were operating at lower wattage than expected,  
 23 which increased cook time:

24 From Cara in or about the fall of 2016 (HMD8451UC):<sup>16</sup>

25 I love the idea of the drawer micro, and when it works, we love it. I moved  
 26 into my new house September 1st. The micro has stopped working 3 times  
 27 with the same issue. It is highly inconvenient. Not to mention the price of  
 28 this machine is crazy expensive for a microwave oven. Customer service  
 told me if after the 3rd repair it breaks again, they would replace it. We

<sup>15</sup> [https://www.amazon.com/product-reviews/B00J58TDQA/ref=acr\\_dp\\_hist\\_1?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews#reviews-filter-bar](https://www.amazon.com/product-reviews/B00J58TDQA/ref=acr_dp_hist_1?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews#reviews-filter-bar) (last accessed September 30, 2019).

<sup>16</sup> *Id.*

1 shall see. I would recommend it with caution as there are very few choices  
2 for drawer microwave ovens.

3 From Mikeseg in or about the fall of 2017 (HMD8451UC):<sup>17</sup>

4 The first issue we experienced was that we had to manually close the  
5 drawer because when we pushed the button the drawer would close and  
6 then reopen. Now the microwave no longer heats the food at all. It was  
7 always weak but this is ridiculous. Unfortunately we bought it just over a  
8 year ago but just installed it a few months ago due to delays in remodeling  
9 our house. I hope Bosch does the right thing and supports its customers.

10 From wallcat in or around the fall of 2017 (HMD8451UC):<sup>18</sup>

11 I've had this for two years. If I were doing it over, I would get something  
12 else. This looks nice, but an ordinary, \$100 counter-top microwave works  
13 better:

14 Cooking performance: - The power is low. - Power distribution is uneven.  
15 It needs a turntable. We wound up getting one of those goofy, wind-up  
16 turntables (yes, someone still make those 1980s things).

17 From Bob331 in or around the fall of 2018 (HMD8451UC):<sup>19</sup>

18 Cooks food evenly although it takes a bit longer to heat than my old  
19 counter model. Expensive compared to a counter or over stove model. I  
20 don't like the controls - they are not illuminated and are impossible to see  
21 at night in the dark.

22 From lthomas28 in or about January or February of 2019 (HMD8053UC):  
23

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24 <sup>17</sup> *Id.*

25 <sup>18</sup> *Id.*

26 <sup>19</sup> *Id.*

27 <sup>20</sup> [https://www.bosch-home.com/us/productslist/cooking-](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/drawer-microwaves/HMD8053UC#/Tabs=section-reviews/)  
28 [baking/microwaves/drawer-microwaves/HMD8053UC#/Tabs=section-reviews/](https://www.bosch-home.com/us/productslist/cooking-baking/microwaves/drawer-microwaves/HMD8053UC#/Tabs=section-reviews/)  
(last accessed September 30, 2019).

1 There is no turntable so you have to rotate the food periodically -- a real  
2 nuisance in this day and age. The power levels are far below other  
3 microwaves so the cooking time is double -- or sometime triple other  
4 ovens. It's difficult to clean the ceiling of the oven with the way the drawer  
pulls out.

5 76. In conjunction with Bosch's experience with kitchen appliances, including  
6 the participation of designing and selling the Microwaves, these facts and complaints  
7 illustrate that Bosch knew or should have known of the defect.

8 77. Bosch has a duty to disclose the defect and to not conceal the defect from  
9 Plaintiffs and Class Members. Bosch's failure to disclose, or active concealment of, the  
10 serious safety defect places Plaintiffs and Class members at risk of personal injury and/or  
11 property damage.

12 78. Bosch is currently still selling the defective Microwaves, concealing the  
13 defect, failing to notify consumers of the safety defect, and failing to recall the  
14 Microwaves.

15 79. Moreover, Bosch continues to falsely represent through written warranties  
16 that the Microwaves are free from defect, are of merchantable quality, and will perform  
17 dependably for years.

18 80. When corresponding with customers, Bosch does not disclose that the  
19 Microwaves suffer from the defect. As a result, reasonable consumers, including  
20 Plaintiffs and Class members, purchased and used, and continue to purchase and use the  
21 Microwaves in their homes even though it is unsafe to do so.

22 81. When Bosch replaces units, it fails to disclose known defect and it replaces  
23 the defective Microwaves with equally defective Microwaves, or just replaces the  
24 magnetron, which does not remedy the defect.

25 82. Had Plaintiffs, Class Members, and the consuming public known that the  
26 Microwaves were defective, posed an unreasonable risk of harm to themselves and their  
27 property, and would cause damage, they would not have purchased the Microwaves.



1 83. Bosch has wrongfully placed on Plaintiffs and Class members the burden,  
2 expense, and difficulty involved in discovering the defect, repairing and replacing the  
3 Microwaves (potentially multiple times), and paying for the cost of damages caused by  
4 the defect.

5 **TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS**

6  
7 84. Bosch had actual awareness for years that the Microwaves contain a defect  
8 that causes the magnetron to overheat and the unit to burn and prematurely fail.

9 85. Although Bosch was aware of the dangerous defect, it took no steps to  
10 warn Plaintiffs or the Class of such defect and the dangers the defect would pose.

11 86. At least by 2016, if not earlier, Bosch had received numerous reports from  
12 consumers of incidents of loud noises, foul odors, smoke, and fire associated with the  
13 Microwaves.

14 87. Bosch has purportedly changed its manufacturing process in its attempt to  
15 correct the problem for newly manufactured Bosch-branded microwave ovens, without  
16 notifying consumers of these changes.

17 88. Bosch did not, however, issue a recall, warn consumers, or take any other  
18 affirmative steps to correct the problem in the Microwaves already in the field with the  
19 defect, neither did Bosch take steps to alert members of the Class about the problem.

20 89. Despite its knowledge, Bosch concealed the fact that the Microwaves were  
21 defective, even though it had a duty to disclose the defect.

22 90. Bosch made affirmative misrepresentations to consumers during the sale  
23 of the Microwaves, including that the Microwaves were free of defect.

24 91. Bosch made affirmative misrepresentations to Plaintiffs and consumers  
25 during warranty claims and other correspondence with consumers lodging complaints,  
26 including that their problems with the Microwaves have been resolved in an effort to  
27 persuade consumers to accept replacement Microwaves or parts, including that  
28

1 replacement magnetron tubes would remedy the problem; and in other ways to be  
2 discovered.

3 92. At all times, Bosch concealed that the Microwaves and any replacements  
4 were defective.

5 93. Bosch's concealment was material to Plaintiffs and Class Members'  
6 decision to purchase the Microwaves. Bosch's concealment was knowing, and Bosch  
7 intended to mislead Plaintiffs and Class Members into relying upon it. Accordingly,  
8 Plaintiffs and Class Members relied upon Bosch's concealment of these material facts  
9 and suffered injury as a proximate result of that justifiable reliance.

10 94. The defect in the design and/or manufacture of the Microwaves was not  
11 detectible to Plaintiffs and members of the Class.

12 95. Bosch actively and intentionally concealed the existence of the defect and  
13 failed to inform Plaintiffs or Class Members of the existence of the defect at all times,  
14 including when they contacted Bosch about the problems. Accordingly, Plaintiffs and  
15 Class Members' lack of awareness was not attributable to lack of diligence on their part.

16 96. Bosch's statements, words, and acts were made for the purpose of  
17 suppressing the truth that the Microwaves and replacements were defective.

18 97. Bosch concealed the defect for the purpose of delaying Plaintiffs and Class  
19 Members from filing a complaint on their causes of action.

20 98. As a result of Bosch's active concealment of the defect and/or failure to  
21 inform Plaintiffs and members of the Class of the defect, any and all applicable statutes  
22 of limitations otherwise applicable to the allegations herein have been tolled.  
23 Furthermore, Bosch is estopped from relying on any statutes of limitations in light of its  
24 active concealment of the defective nature of the Microwaves.

25 **CLASS ACTION ALLEGATIONS**

26  
27 99. Plaintiff Edin brings this action individually and as a class action pursuant  
28

1 to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the following Minnesota  
2 Class:

3  
4 All persons residing in the State of Minnesota who purchased a Bosch  
Microwave Drawer, model numbers HMD8053UC and HMD8451UC.

5  
6 100. Plaintiff Giandonato brings this action individually and as a class action  
7 pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the following Florida  
8 Class:

9  
10 All persons residing in the State of Florida who purchased a Bosch  
Microwave Drawer, model numbers HMD8053UC and HMD8451UC.

11  
12 101. Plaintiffs reserve the right to modify the class definitions if necessary to  
13 include additional Bosch Microwave drawer models with the same defect and/or other  
14 Microwave drawers manufactured by Bosch with the common defect but bearing  
different brand names.

15  
16 102. Numerosity: The members of each Class are so numerous that joinder of  
17 all members is impracticable. While the exact number of Class members is presently  
18 unknown, it consists of thousands of people geographically disbursed throughout  
19 Minnesota and Florida. The number of Class members can be determined by sales  
20 information and other records. Moreover, joinder of all potential Class members is not  
21 practicable given their numbers and geographic diversity. The Class is readily  
22 identifiable from information and records in the possession of Bosch and its third-party  
distributors.

23  
24 103. Commonality: Common questions of law and fact exist as to all members  
25 of each Class. These questions predominate over questions that may affect only  
26 individual Class Members because Bosch has acted on grounds generally applicable to  
the Class. Such common legal or factual questions include, *inter alia*:

- (a) Whether the Microwaves are defective;
- (b) Whether the Microwaves are defectively designed and/or manufactured;
- (c) Whether Bosch knew or reasonably should have known about the defect prior to distributing the Microwaves to Plaintiffs and the members of the Classes;
- (d) Whether Bosch concealed from and/or failed to disclose to Plaintiffs and the members of the Classes the problems with the Microwaves;
- (e) Whether Bosch knew or reasonably should have known about the defect after distributing the Microwaves to Plaintiffs and the members of the Classes;
- (f) Whether Bosch breached the implied warranty of merchantability;
- (g) Whether Bosch breached express warranties relating to the Microwaves;
- (h) Whether Bosch's Limited Product Warranty is unconscionable;
- (i) Whether Bosch was unjustly enriched by receiving moneys in exchange for Microwaves that were defective;
- (j) Whether Bosch should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Microwaves;
- (k) Whether Plaintiffs and the members of the Classes are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;
- (l) Whether Bosch should be enjoined from selling and marketing its defective Microwaves; and
- (m) Whether Bosch engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Microwaves.

104. Typicality: Plaintiffs' claims are typical of the members of the Classes as all members of the Classes are similarly affected by the same defect and Bosch's actionable conduct. Plaintiffs and all members of the Classes purchased the Microwaves with a defect that makes the Microwaves inherently dangerous. In addition, Bosch's conduct that gave rise to the claims of Plaintiffs and members of the Classes (*i.e.* delivering a defective microwave drawer, concealing the defect, and breaching warranties respecting the microwave drawer) is the same for all members of the Classes.

105. Adequacy of Representation: Plaintiffs will fairly and adequately protect the

1 interests of the Classes because they have no interests antagonistic to, or in conflict with,  
2 the Classes that Plaintiffs seek to represent. Furthermore, Plaintiffs have retained counsel  
3 experienced and competent in the prosecution of complex class action litigation.

4 106. Injunctive/Declaratory Relief: The elements of Rule 23(b)(2) are met.  
5 Defendant will continue to commit the unlawful practices alleged herein, and members  
6 of the Classes will remain at an unreasonable and serious safety risk as a result of the  
7 defect. Bosch has acted and refused to act on grounds that apply generally to the Classes,  
8 such that final injunctive relief and corresponding declaratory relief is appropriate  
9 respecting the Classes as a whole.

10 107. Predominance: The elements of Rule 23(b)(3) are met. The common  
11 questions of law and fact enumerated above predominate over the questions affecting  
12 only individual members of the Classes, and a class action is the superior method for the  
13 fair and efficient adjudication of this controversy. The likelihood that individual Class  
14 Members will prosecute separate actions is remote due to the time and expense necessary  
15 to conduct such litigation. Serial adjudication in numerous venues is not efficient, timely,  
16 or proper. Judicial resources will be unnecessarily depleted by resolution of individual  
17 claims. Joinder on an individual basis of hundreds or thousands of claimants in one suit  
18 would be impractical or impossible. Individualized rulings and judgments could result in  
19 inconsistent relief for similarly-situated Plaintiffs.

20 108. Plaintiffs know of no difficulty to be encountered in the maintenance of  
21 this action that would preclude its maintenance as a class action.

22 109. Bosch has acted or refused to act on grounds generally applicable to the  
23 Classes, thereby making appropriate final injunctive relief or corresponding declaratory  
24 relief with respect to the Classes as a whole.

**FIRST CLAIM FOR RELIEF**  
**Breach of Implied Warranties**  
**(Plaintiffs Individually and on Behalf of the Florida and Minnesota Classes)**

110. Plaintiffs hereby adopt and incorporate by reference, all foregoing allegations as though fully set forth herein.

111. Bosch is a merchant and was at all relevant times involved in the manufacturing, and is the distributor, warrantor, and/or seller of the Microwaves. Bosch knew or had reason to know of the specific use for which the Microwaves, as goods, were purchased.

112. Bosch entered into agreements with retailers, suppliers, and/or contractors to sell its Microwaves to be installed at Plaintiffs' and Class Members' homes.

113. Bosch provided Plaintiffs and Class Members with implied warranties that the Microwaves were merchantable and fit for the ordinary purposes for which they were used and sold and were not otherwise injurious to consumers.

114. However, the Microwaves are not fit for their ordinary purpose of providing reasonably reliable and safe heating of food because, *inter alia*, the Microwaves contain a defect preventing the Microwaves from safely heating food without electrical arcing, smoking, melting the magnetron tube and potentially catching fire, as well as preventing the Microwaves from cooking food at the represented wattage. Therefore, the Microwaves are not fit for their particular purpose of safely heating and/or cooking food.

115. The problems associated with the defect, such as electrical arcing, smoking, melting the magnetron tube and potentially catching fire are safety risks such that the Microwaves do not provide safe reliable cooking appliances, and therefore, there is a breach of the implied warranty of merchantability. These problems are exacerbated, in part, by Bosch's failure to design and/or implement a safety function that will shut the Microwaves off in the event of arcing.



1           116. Plaintiffs and Class Members have had sufficient direct dealings with either  
2 Bosch or one of its agents to establish privity of contract between Bosch, on the one  
3 hand, and Plaintiffs and each Class Member, on the other hand.

4           117. Notwithstanding, privity is not required because Plaintiffs and each of the  
5 members of the class are the intended beneficiaries of Bosch's written warranties and its  
6 relationships with retailers. The retailers were not intended to be the ultimate consumers  
7 of the Microwaves and have no rights under the warranty agreements provided by  
8 Bosch. Bosch's warranties were designed for and intended to benefit the consumer only  
9 and Plaintiffs and Class Members were the intended beneficiaries of the Microwaves.

10           118. Bosch impliedly warranted that the Microwaves were of merchantable  
11 quality and fit for such use. These implied warranties included, among other things: (i)  
12 a warranty that the Microwaves manufactured, supplied, distributed, and/or sold by  
13 Bosch were safe and reliable for heating food; and (ii) a warranty that the Microwaves  
14 would be fit for their intended use while the Microwaves were being operated.

15           119. Contrary to the applicable implied warranties, the Microwaves, at the time  
16 of sale and thereafter, were not fit for their ordinary and intended purpose of providing  
17 Plaintiffs and Class Members with reliable, durable, and safe methods of heating food.  
18 Instead, the Microwaves suffer from a defective design and/or manufacture, as alleged  
19 herein.

20           120. Bosch's failure to adequately repair or replace the defective Microwaves  
21 has caused the warranty to fail of its essential purpose.

22           121. Bosch breached the implied warranties because the Microwaves were sold  
23 with the defect, which substantially reduced and/or prevented the Microwaves from  
24 being used for safe food preparation.

25           122. As a direct and proximate result of the foregoing, Plaintiffs and the Class  
26 Members suffered, and continue to suffer, financial damage and injury, and are entitled  
27

1 to all damages, in addition to costs, interest and fees, including attorneys' fees, as allowed  
2 by law.

3 **SECOND CLAIM FOR RELIEF**  
4 **Breach of Express Warranty**  
5 **(Plaintiffs Individually and on Behalf of the Florida and Minnesota Classes)**

6 123. Plaintiffs hereby adopt and incorporate by reference, all foregoing  
7 allegations as though fully set forth herein.

8 124. In connection with its sale of the Microwaves, Bosch expressly warranted  
9 that they were free from defect at the time of shipping, operated at up to 950 watts, and  
10 suitable for heating food.

11 125. The defectively designed Microwaves are subject to and otherwise covered  
12 by Bosch's Limited Product Warranty, which applies to each Microwave.

13 126. Each of the Microwave models has an identical or substantially identical  
14 warranty.

15 127. Bosch was obligated, under the terms of the express warranty to adequately  
16 repair or replace the defective Microwaves for Plaintiffs and Class Members.

17 128. In the Limited Product Warranty, Bosch warrants "that the Product is free  
18 from defect in materials and workmanship for a period of twelve (12) months from the  
19 date of purchase."

20 129. Bosch's warranty representations are made online, on its packaging,  
21 through its Use and Care Manual, and its Limited Product Warranty.

22 130. Bosch breached the warranty because it improperly and unlawfully denies  
23 valid warranty claims, and it has failed or refused to adequately repair or replace the  
24 Microwaves with non-defective units. Plaintiffs and the Class Members have privity of  
25 contract with Bosch through their purchase of the Microwaves, and through the express  
26 written and implied warranties that Bosch issued to its customers. Bosch's warranties  
27 accompanied the Microwaves and were intended to benefit end-users of the  
28

1 Microwaves. To the extent Class Members purchased the Microwaves from third-party  
2 retailers or via the purchase of their homes, privity is not required because the Class  
3 Members are intended third-party beneficiaries of the contracts between Bosch and  
4 third-party retailers and because the express warranty is intended to benefit purchasers  
5 or owners subsequent to the third-party retailer; in other words, the contracts are  
6 intended to benefit the ultimate consumer or user of the Microwaves.

7 131. The express written warranties covering the Microwaves were a material  
8 part of the bargain between Bosch and consumers. At the time it made these express  
9 warranties, Bosch knew of the purpose for which Microwaves were to be used.

10 132. Bosch breached its express warranties by selling Microwaves that were, in  
11 actuality, not free of defect, not operable at 950 watts, not made from merchantable  
12 material and workmanship, unsafe for use, and could not be used for the ordinary  
13 purpose of heating food. Bosch breached its express written warranties to Plaintiffs and  
14 Class Members in that the Microwaves are defective at the time they leave the  
15 manufacturing plant, and on the first day of purchase, creating a serious safety risk to  
16 Plaintiffs and Class Members.

17 133. The Microwaves that the Plaintiffs and Class Members purchased  
18 contained a defect that caused each of them damages including smoke damage, loss of  
19 food, loss of the product, loss of the benefit of their bargain, and other property damage.

20 134. The limitations and the exclusions in Bosch's Warranty are harsh,  
21 oppressive, one-sided, unconscionable and unenforceable, as described *supra*,  
22 particularly in light of the fact that Bosch knew that the Microwaves suffered from the  
23 defect described herein.

24 135. Any attempt by Bosch to limit or disclaim the express warranty in a manner  
25 that would exclude coverage of the defect is unconscionable as a matter of law because  
26 the relevant purchase transactions were tainted by Bosch's concealment of material facts.

1 Thus, any such effort to disclaim, or otherwise limit, its liability for the defect is null and  
2 void.

3 136. Plaintiffs and Class Members notified Bosch of its breach of the express  
4 warranty shortly after their Microwaves failed to perform as warranted due to the defect.  
5 Nonetheless, Bosch unlawfully denied Plaintiffs' and Class Members' warranty claims.

6 137. Moreover, Bosch was put on constructive notice about its breach through  
7 its review of consumer complaints and media reports described herein, and, upon  
8 information and belief, through product testing.

9 138. Upon information and belief, Bosch received further notice and has been  
10 on notice of the defective nature of the Microwaves and of its breaches of warranties  
11 through customer warranty claims reporting problems with Bosch, consumer  
12 complaints at various sources, and its own internal and external testing. Bosch also  
13 received such notice through Plaintiff Edin.

14 139. Despite having notice and knowledge of the defective nature of the  
15 Microwaves, Bosch failed to provide any relief to Class Members with Microwaves more  
16 than one (1) year old, failed to provide a non-defective replacement Microwave to  
17 Plaintiffs and Class Members, and otherwise failed to offer any appropriate repair or  
18 compensation from the resulting damages.

19 140. Bosch breached its express warranty to adequately repair or replace the  
20 Microwaves despite its knowledge of the Defect, and/or despite its knowledge of  
21 alternative designs, materials, and/or options for manufacturing the Microwaves.

22 141. To the extent that Bosch offered to replace the defective Microwaves, the  
23 warranty of replacement fails in its essential purpose given it is insufficient to make  
24 Plaintiffs and Class Members whole because the warranty covering the Microwaves  
25 gives Bosch the option to repair or replace the Microwave, where neither is sufficient.  
26 Specifically, in its course of business, Bosch often has opted to provide a replacement  
27 Microwave to complaining consumers; however, the replacement Microwave likewise  
28

1 contains the Defect, resulting in the same safety risks to the owners, and the same or  
2 similar damages can occur to the replacement Microwave and the owner's personal  
3 property.

4 142. Many of the damages resulting from the defective Microwaves cannot be  
5 resolved through the limited remedy of replacement, as incidental and consequential  
6 damages from loss of contaminated meals, smoke damage to cabinetry, and water  
7 damage from deployed sprinklers, have already been suffered due to Bosch's conduct as  
8 alleged herein.

9 143. Accordingly, recovery by Plaintiffs and Class Members is not limited to the  
10 limited warranty of replacement, and they seek all remedies allowed by law.

11 144. Had Plaintiffs, Class Members, and the consuming public known that the  
12 Microwaves were defective, posed an unreasonable risk of harm to themselves and their  
13 property, would cause damage, or that Bosch would not properly honor its warranty,  
14 they would not have purchased the Microwaves.

15 145. To the extent any express warranties do not by their terms cover the defect  
16 alleged in this Complaint, and to the extent the contractual remedy is in any other respect  
17 insufficient to make Plaintiffs and Class Members whole, the warranty fails of its  
18 essential purpose and, accordingly, recovery by Plaintiffs and Class Members are not  
19 restricted to the promises in any written warranties, and they seek all remedies that may  
20 be allowed.

21 146. Plaintiffs and Class Members have performed all duties required of them  
22 under the terms of the express warranty, except as may have been excused or prevented  
23 through the conduct of Bosch or by operation of law in light of Bosch's conduct  
24 described throughout this Complaint.

25 147. Bosch has received timely notice regarding the problems at issue in this  
26 litigation, and notwithstanding, Bosch has failed and refused to offer an effective  
27 remedy.

1        148. As a direct and proximate result of Bosch's breach of its express written  
2 warranties, Plaintiffs and Class Members have suffered damages and did not receive the  
3 benefit of the bargain and are entitled to recover compensatory damages, including, but  
4 not limited to the cost of inspection, repair and diminution in value. Plaintiffs and Class  
5 members suffered damages at the point of sale stemming from their overpayment for  
6 the defective Microwaves, in addition to loss of the product and its intended benefits.

7  
8                    **THIRD CLAIM FOR RELIEF**  
9                    **(IN THE ALTERNATIVE)**

10                    **Breach of Contract**  
11                    **(Plaintiffs Individually and on Behalf of the Florida and Minnesota Classes)**

12        149. Plaintiffs hereby adopt and incorporate by reference, all foregoing  
13 allegations as though fully set forth herein.

14        150. To the extent Bosch's commitment is deemed not to be a warranty under  
15 Florida and Minnesota's Uniform Commercial Code, Plaintiffs plead in the alternative  
16 under common law warranty and contract law.

17        151. Plaintiffs and Class Members purchased the Microwaves from Bosch or  
18 through retailers such as Best Buy, Home Depot, Lowe's, Amazon, and other appliance  
19 stores.

20        152. Bosch expressly warranted that the Microwaves were fit for their intended  
21 purpose and that they were free of defect, suitable for safe heating of food, and heat  
22 food at 950 watts.

23        153. Bosch made the foregoing express representations and warranties to all  
24 consumers, which became the basis of the bargain between Plaintiffs, Class Members,  
25 and Bosch.

26        154. Defendant breached the warranties and/or contract obligations by placing  
27 the defective Microwaves into the stream of commerce and selling them to consumers,  
28 when it knew the Microwaves contained defect, were prone to premature failure, did not

1 safely heat food, and did not heat food at 950 watts. These deficiencies substantially  
2 and/or completely impair the use and value of the Microwaves.

3 155. The deficiencies described existed when the Microwaves left Bosch's  
4 possession or control and were sold to Plaintiffs and Class Members. The deficiencies  
5 and impairment of the use and value of the Microwaves was not discoverable by  
6 Plaintiffs or Class Members at the time of the purchase of the Microwaves.

7 156. As a direct and proximate cause of Bosch's breach of contract, Plaintiffs  
8 and Class Members were harmed because they would not have purchased the  
9 Microwaves if they knew the truth about the defective condition of the Microwaves.

10  
11 **FOURTH CLAIM FOR RELIEF**  
12 **(IN THE ALTERNATIVE)**

13 **Unjust Enrichment**  
**(Plaintiffs Individually and on Behalf of the Florida and Minnesota Classes)**

14 157. Plaintiffs hereby adopt and incorporate by reference, all foregoing  
15 allegations as though fully set forth herein.

16 158. This alternative claim is asserted on behalf of Plaintiffs and Class Members  
17 to the extent there is any determination that any contracts between Class Members and  
18 Bosch do not govern the subject matter of the disputes with Bosch, or that Plaintiffs do  
19 not have standing to assert any contractual claims against Bosch.

20 159. Plaintiffs and Class Members conferred a monetary benefit on Bosch, and  
21 Bosch had knowledge of this benefit. The average price paid by Plaintiffs and Class  
22 Members for the Microwaves was more than \$1,000.00.

23 160. By its wrongful acts and omissions described herein, including selling the  
24 defective Microwaves, Bosch was unjustly enriched at the expense of Plaintiffs and Class  
25 Members.

26 161. Plaintiffs' and Class Members' detriment and Bosch's enrichment were  
27 related to and flowed from the wrongful conduct alleged in this Complaint.



1        162. It would be inequitable for Bosch to retain the profits, benefits, and other  
 2 compensation obtained from its wrongful conduct as described herein in connection  
 3 with selling the defective Microwaves.

4        163. Plaintiffs and Class Members seek restitution from Bosch and an order of  
 5 this Court proportionally disgorging all profits, benefits, and other compensation  
 6 obtained by Bosch from its wrongful conduct and establishing a constructive trust from  
 7 which Plaintiffs and Class Members may seek restitution.

8  
 9                                    **FIFTH CLAIM FOR RELIEF**  
 10                                  **Violation of Florida's Deceptive and Unfair Trade Practices Act**  
 11                                    **Fla. Stat. § 501.201 *et seq.***  
                                   **(Plaintiff Giandonato Individually and on Behalf of the Florida Class)**

12        164. Plaintiff Giandonato hereby adopt and incorporate by reference, all  
 13 foregoing allegations as though fully set forth herein.

14        165. This cause of action is brought pursuant to the Florida Deceptive and  
 15 Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201 *et seq.* The stated purpose  
 16 of this Act is to "protect the consuming public . . . from those who engage in unfair  
 17 methods of competition, or unconscionable, deceptive, or unfair acts or practices in the  
 18 conduct of any trade or commerce." *Id.* § 501.202(2).

19        166. Plaintiff Giandonato and all Florida Class members are "consumers" and  
 20 the transactions at issue in this Complaint constitute "trade or commerce" as defined  
 21 by FDUTPA. *See id.* § 501.203(7)-(8).

22        167. FDUTPA declares unlawful "[u]nfair methods of  
 23 competition, unconscionable acts or practices, and unfair or deceptive acts or practices  
 24 in the conduct of any trade or commerce." *Id.* § 501.204(1).

25        168. Bosch manufactures, distributes, markets, advertises and sells the  
 26 Microwaves. The Microwaves are "goods" within the meaning of FDUTPA.

27        169. For the reasons discussed herein, Bosch violated and continues to violate  
 28

1 FDUTPA by engaging in the herein described unconscionable, deceptive, unfair acts or  
2 practices proscribed by Florida Statute §501.201, *et seq.* Defendant's acts and practices,  
3 including its omissions, described herein, were likely to, and did in fact, deceive and  
4 mislead members of the public, including Ms. Giandonato and other consumers acting  
5 reasonably under the circumstances, to their detriment.

6 170. Bosch engaged in the following unconscionable, unfair, deceptive, and  
7 unconscionable practices:

- 8 (a) Bosch manufactured, distributed, marketed, advertised and sold the  
9 Microwaves with the defect, which was present at the point of sale;
- 10 (b) Bosch knew or should have known of the defect and failed to disclose  
11 or concealed the defect from consumers;
- 12 (c) Bosch knew the defect within the Microwaves was unknown to  
13 consumers, and would not be easily discovered by Ms. Giandonato  
14 and putative Florida Class Members, and would defeat their ordinary,  
15 foreseeable and reasonable expectations concerning the performance  
16 of the Microwaves;
- 17 (d) Bosch warranted that the Microwaves are free from defect, when the  
18 Microwaves contain the defect;
- 19 (e) Bosch represented to consumers, including Ms. Giandonato and  
20 Florida Class Members, that the Microwaves are safe and fit for the  
21 use for which they were intended, both before and after consumers  
22 complained of the defect; and
- 23 (f) Bosch represented to consumers, including Ms. Giandonato and  
24 Florida Class Members, that the Microwaves operate at 950 watts,  
25 when they do not due to the defect.

26 171. Bosch warranted and represented that the Microwaves were safe and free  
27 from defect in materials and workmanship and that they were suitable for its intended  
28

1 use. However, the Microwaves contain a defect making them susceptible to premature  
2 failure and catching fire, including when used for its intended purpose.

3 172. Bosch had exclusive knowledge of material facts concerning the defect,  
4 including that it caused an obstruction or disturbance in the transmission of the energy  
5 to the cooking cavity, causing the Microwaves operate at a maximum of only 750 watts,  
6 despite Bosch advertising and marketing the Microwaves as having 950 watts cooking  
7 capacity.

8 173. Bosch had exclusive knowledge of material facts concerning the defect,  
9 including that it made the Microwaves susceptible to premature failure and catching  
10 fire, including when used for their intended purpose.

11 174. Bosch knew before Ms. Giandonato purchased her Microwave, that the  
12 Microwaves suffered from the dangerous defect, and were not suitable for their intended  
13 use.

14 175. Despite Bosch's exclusive knowledge of material facts concerning the  
15 existence of the defect in the Microwaves, Bosch actively concealed the defect from  
16 consumers by failing to disclose the defect to consumers.

17 176. Despite Bosch's exclusive knowledge of material facts concerning the  
18 existence of the defect in the Microwaves, Bosch denied the existence of the defect to  
19 consumers complaining about the defect.

20 177. Ms. Giandonato purchased the Microwave after performing research and  
21 viewing models of the Microwaves. Specifically, she purchased her unit based, in part,  
22 on Bosch's name, reputation, and representations that the Microwaves were of high  
23 quality. Ms. Giandonato's purchase was also based on the unique drawer feature that  
24 would be installed in custom cabinetry and free up counterspace. She was unaware of  
25 the defect at the time she purchased the Microwave and had no reason to know of the  
26 defect at that time.

27 178. Based on brand name and the price of the Microwave, Ms. Giandonato  
28

1 also believed the warranty would be longer than just one year and expected Bosch  
2 would repair or replaced the Microwave if it failed.

3 179. Bosch's practices described herein were likely to deceive, and did deceive,  
4 consumers acting reasonably under the circumstances. Consumers, including Ms.  
5 Giandonato and Florida Class Members, would not have purchased the Microwaves, or  
6 would have paid less for them, had they known that the Microwaves contained the  
7 defect.

8 180. Bosch's violations described herein present a continuing risk to Ms.  
9 Giandonato and the general public. Bosch's unlawful acts and practices complained of  
10 herein affect the public interest.

11 181. As a result of Bosch's misconduct, Ms. Giandonato and Florida Class  
12 Members have been harmed and suffered actual damages in that the Microwaves have a  
13 serious safety defect, causing inconvenience, and the inability to safely cook food.

14 182. As a direct and proximate result of Bosch's unfair or deceptive acts or  
15 practices, Ms. Giandonato and Florida Class Members have been damaged, and are  
16 entitled to recover actual damages to the extent permitted by law, including class action  
17 rules, in an amount to be proven at trial.

18 183. Ms. Giandonato seeks an order enjoining Bosch's unfair, unlawful, and/or  
19 deceptive practices, attorneys' fees, and any other just and proper relief available under  
20 the FDUTPA and applicable law.

21 **SIXTH CLAIM FOR RELIEF**

22 **Violation of Minnesota Consumer Fraud Act**

23 **Minn. Stat. § 325F.68, *et seq.***

24 **(Plaintiff Edin Individually and on Behalf of the Minnesota Class)**

25 184. Plaintiffs hereby adopt and incorporate by reference, all foregoing  
26 allegations as though fully set forth herein.

1 185. Minn. Stat. § 325F.69, Subdivision 1 provides:

2 The act, use, or employment by any person of any fraud,  
3 false pretense, false promise, misrepresentation,  
4 misleading statement or deceptive practice, with the intent  
5 that others rely thereon in connection with the sale of any  
6 merchandise, whether or not any person has in fact been  
7 misled, deceived, or damaged thereby, is enjoined as  
8 provided in Section 325F.70.

9 186. Bosch sold merchandise in the form of its Microwaves to Mr. Edin and  
10 Class Members.

11 187. Bosch's business practices, in manufacturing, warranting, advertising,  
12 marketing and selling its Microwaves, of misrepresenting that its Microwaves would  
13 be free from defect and operate at 950 watts, even though Bosch knew and had  
14 substantial evidence to the contrary, constitute the use of fraud, false promises,  
15 misrepresentations, misleading statements and deceptive practices and, thus,  
16 constitute multiple, separate violations of Minn. Stat. § 325F.69.

17 188. Bosch's business practices, in manufacturing, warranting, advertising,  
18 marketing and selling its Microwaves while concealing, failing to disclose, suppressing  
19 or omitting material information, including the defect in the Microwaves and Bosch's  
20 knowledge of the defect, while continuing to misrepresent its Microwaves as products  
21 that are free of defect, constitute the use of fraud, false promises, misrepresentations,  
22 misleading statements and deceptive practices and, thus, constitute multiple, separate  
23 violations of Minn. Stat. § 325F.69.

24 189. Bosch concealed the defective nature of its Microwaves even after  
25 members of the Minnesota Class began to report problems. Indeed, Bosch continues  
26 to affirmatively misrepresent and conceal from its dealers, distributors, and the public,  
27 the true nature of its Microwaves. These omissions and misrepresentations constitute  
28 the use of fraud, false promises, misrepresentations, misleading statements and

1 deceptive practices and, thus, constitute multiple, separate violations of Minn. Stat. §  
2 325F.69.

3       190. Bosch knew or should have known its Microwaves were defectively  
4 designed and/or manufactured, would fail prematurely, were not suitable for their  
5 intended use, would not operate at 950 watts, and otherwise were not as warranted  
6 and represented by Bosch. The fact that Bosch's Microwaves fail prematurely and are  
7 not able to operate at 950 watts are material facts, the omissions of which have the  
8 tendency or capacity or is likely to mislead or deceive Mr. Edin and Minnesota Class  
9 Members, and is a fact which could not reasonably be known by Mr. Edin and  
10 Minnesota Class Members. These omissions constitute the use of fraud, false  
11 promises, misrepresentations, misleading statements and deceptive practices and,  
12 thus, constitute multiple, separate violations of Minn. Stat. § 325F.69.

13       191. In connection with the manufacturing, warranting, advertising,  
14 marketing and sale of Bosch's Microwaves, Bosch made the material omissions and  
15 misrepresentations set forth in this Complaint in its warranty, advertising and other  
16 promotional materials disseminated by or on behalf of Bosch in Minnesota.

17       192. Bosch's omissions and misrepresentations set forth in this Complaint are  
18 material in that they relate to information that would naturally affect the purchasing  
19 decisions or conduct of purchasers, including Mr. Edin and Minnesota Class  
20 Members, regarding Bosch's Microwaves.

21       193. Bosch had a duty to disclose to Mr. Edin and members of the Minnesota  
22 Class the latent defect in its Microwaves as the facts were material to Mr. Edin's and  
23 the Minnesota Class Members' transactions; because it made contrary representations  
24 and statements, including that the Microwaves were defect free; because Bosch, as the  
25 party with knowledge of the defect, knew that Mr. Edin and members of the  
26 Minnesota Class were entering transactions under a mistake as to the fact of the  
27 defective design of the Microwaves; because the fact of the defective nature of the  
28

1 design was peculiarly and exclusively within Bosch's knowledge and the mistaken  
2 parties, Mr. Edin and Minnesota Class Members, could not reasonably be expected to  
3 discover it; and on account of the objective circumstances, Mr. Edin and the members  
4 of the Minnesota Class reasonably expected disclosure of the fact of the defect.

5 194. The facts concealed and/or not disclosed by Bosch to Mr. Edin and the  
6 Minnesota Class are material facts in that such facts would naturally affect the conduct  
7 of purchasers and a reasonable person would have considered those facts to be  
8 important in deciding whether or not to purchase Bosch's Microwaves.

9 195. Had Mr. Edin and the Minnesota Class known of the defective nature of  
10 Bosch's Microwaves, they would not have purchased the Microwaves or would have  
11 paid less for their Microwaves.

12 196. If Mr. Edin had known his Microwave was defective, or that he would  
13 be required to replace his Microwave prematurely, Mr. Edin would not have paid the  
14 price he did to purchase his Microwave.

15 197. Bosch possessed knowledge of the Microwaves' defective nature prior  
16 to bringing the product to market. Bosch fraudulently, negligently, recklessly and/or  
17 intentionally concealed and/or failed to disclose the true nature of the design and/or  
18 manufacturing defect in its Microwaves for the purpose of inducing Mr. Edin and the  
19 Minnesota Class to rely thereon, and Mr. Edin and the Minnesota Class justifiably  
20 relied to their detriment upon the truth and completeness of Bosch's representations  
21 about its Microwaves. Mr. Edin and the Minnesota Class relied on Bosch disclosing  
22 all materials facts and not omitting any material information regarding Bosch's  
23 Microwaves. This is evidenced by Mr. Edin's and Minnesota Class Members' purchase  
24 of Bosch's Microwaves.

25 198. Bosch's fraudulent and deceptive practices repeatedly occurred in  
26 Bosch's trade or business and were capable of deceiving a substantial portion of the  
27 purchasing public.



1        199. As a direct and proximate cause of Bosch's false and deceptive  
2 misrepresentations and omissions regarding its Microwaves, Mr. Edin has suffered  
3 actual injuries in that his Microwave has failed prematurely. Minnesota Class Members  
4 have also suffered actual injury in that their Microwaves have failed prematurely  
5 and/or Minnesota Class Members are reasonably certain to suffer actual injury well in  
6 advance of the warranted and expected life of their Microwaves as the failure process  
7 has commenced in their Microwaves.

8        200. Separate from, and in addition to, their actual damages, Mr. Edin's and  
9 Minnesota Class Members' expectations were frustrated as a result of Bosch's  
10 omissions and misrepresentations, and Mr. Edin and Minnesota Class Members did  
11 not receive what they expected to receive, which injury constitutes a loss. Mr. Edin  
12 and Minnesota Class Members are thus entitled to recover the difference between the  
13 actual value of the Microwaves and the value the Microwaves would have possessed  
14 had Bosch's representations about the quality of the Microwaves been true.

15        201. As a result of Defendant's unlawful conduct, Mr. Edin and Minnesota  
16 Class members were injured and suffered damages. Mr. Edin and Minnesota Class  
17 members are entitled to recover their actual damages, and costs and disbursements,  
18 including costs of investigation and reasonable attorneys' fees, as well as injunctive  
19 relief and other equitable relief, including restitution, as determined by the Court,  
20 pursuant to Minnesota law, including Minn. Stat. §§ 8.31, subd. 1 and 3a. and 325F.69.

21  
22                    **SEVENTH CLAIM FOR RELIEF**

23                    **Violations of the Minnesota Uniform Deceptive Trade Practices Act**  
24                    **(Plaintiff Edin Individually and on Behalf of the Minnesota Class)**

25        202. Plaintiffs hereby adopt and incorporate by reference, all foregoing  
26 allegations as though fully set forth herein.

27        203. Minn. Stat. § 325D.44, subdivision 1 provides, in part, as follows:  
28

1 Subdivision 1. A person engages in a deceptive trade practice when, in the  
2 course of business, vocation, or occupation, the person:

3 (5) represents that goods or services have sponsorship, approval,  
4 characteristics, ingredients, uses, benefits or quantities that they do not  
5 have...;

6 (7) represents that goods are of a particular standard, quality, or grade,  
7 or that goods are of a particular style or model, if they are of another . . . ;  
8 or

9 (13) engages in any other conduct which similarly creates likelihood of  
10 confusion or of misunderstanding.

11 204. Bosch's business practices, in manufacturing, warranting, advertising,  
12 marketing and selling its Microwaves, in misrepresenting material facts, including that  
13 the Microwaves are defect free, and constitute multiple, separate violations of Minn.  
14 Stat. § 325D.44, subd. 1 (5), (7) and (13), including:

15 (a) Falsely representing that its Microwaves have characteristics, uses,  
16 benefits or quantities of being defect free, when, in fact, they are not, and  
17 expected to last for the warranted and represented lifetimes of the  
18 products, when, in fact, they do not;

19 (b) Falsely representing that its Microwaves are of a particular standard,  
20 quality or grade, including that they are capable of operating at up to 950  
21 watts when, in fact, they are not; and

22 (c) Creating the likelihood of confusion or of misunderstanding among  
23 consumers about the nature and quality of its Microwaves, including that  
24 they are defect free and will last their warranted and represented product  
25 lifetimes, when, in fact, they are not and do not.

26 205. Bosch's business practices, in manufacturing, warranting, advertising,  
27 marketing and selling its Microwaves while misrepresenting material facts, including  
28 that the Microwaves are defect free, are able to operate at up to 950 watts, and failing  
to disclose, concealing, suppressing, and omitting material information concerning the

1 defect in its Microwaves and the true, lower life expectancy of the products, constitute  
2 multiple, separate violations of Minn. Stat. § 325D.44, subd. 1 (5), (7) and (13).

3 206. Bosch engaged in the above conduct in the course of Bosch's business.

4 207. As a result of Bosch's unlawful conduct, Mr. Edin and Minnesota Class  
5 Members were injured and suffered damages, and are entitled to recover their actual  
6 damages, costs and disbursements, including costs of investigation and reasonable  
7 attorneys' fees, as well as injunctive relief and other equitable relief, including  
8 restitution, as determined by the Court, pursuant to Minnesota law, including Minn.  
9 Stat. §§ 8.31, subd. 1 and 3a. and 325D.45.

#### 10 **EIGHTH CLAIM FOR RELIEF**

#### 11 **Violations of the Minnesota Unlawful Trade Practices Act** 12 **(Plaintiff Edin Individually and on Behalf of the Minnesota Class)**

13 208. Plaintiffs hereby adopt and incorporate by reference, all foregoing  
14 allegations as though fully set forth herein.

15 209. Minn. Stat. § 325D.13 provides, in part, as follows:

16  
17 No person shall, in connection with the sale of merchandise, knowingly  
18 misrepresent, directly or indirectly, the true quality, ingredients or origin  
19 of such merchandise.

20 210. Bosch knowingly misrepresented and concealed the true quality of its  
21 Microwaves in connection with the sale of that merchandise.

22 211. Bosch knowingly misrepresented that its Microwaves are defect free,  
23 able to operate at up to 950 watts, are safe, and suitable for heating food.

24 212. Bosch knowingly concealed from and failed to disclose to Mr. Edin and  
25 Minnesota Class members, in connection with the sale of its Microwaves, material  
26 information, including the defective nature of the products and the true, lower life  
27 expectancy of Bosch's Microwaves.

1       213. Bosch's omissions and misrepresentations had the tendency or capacity  
2 to deceive or mislead Mr. Edin, Minnesota Class Members and a substantial segment  
3 of consumers.

4       214. Bosch's omissions and misrepresentations were material because they  
5 related to facts that would naturally affect the conduct of purchasers and that a  
6 reasonable person, including Mr. Edin and Minnesota Class members, would have  
7 considered important in deciding whether to purchase Bosch's Microwaves.

8       215. Bosch caused its Microwaves to enter into interstate commerce.

9       216. As a result of Bosch's unlawful conduct, Mr. Edin and Minnesota Class  
10 Members were injured and suffered damages, and are entitled to recover their actual  
11 damages, costs and disbursements, including costs of investigation and reasonable  
12 attorneys' fees, as well as injunctive relief and other equitable relief, including  
13 restitution, as determined by the Court, pursuant to Minnesota law, including Minn.  
14 Stat. §§ 8.31, subd. 1 and 3a. and 325D.15.x.

15  
16                                   **PRAYER FOR RELIEF**

17       WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly  
18 situated, respectfully request that this Court:

- 19       A. Certify the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure;  
20       B. Name Mr. Edin as Class Representative of the Minnesota Class and Ms.  
21       Giandonato as Class Representative of the Florida Class;  
22       C. Name Plaintiffs' counsel as Class Counsel for the Classes;  
23       D. Award damages, including compensatory, exemplary, and statutory damages, to  
24       Plaintiffs and the Classes in an amount to be determined at trial;  
25       E. Grant restitution to Plaintiffs and the Classes and require Bosch to disgorge its  
26       ill-gotten gains;

- 1 F. Permanently enjoin Bosch from engaging in the wrongful and unlawful conduct  
2 alleged herein;
- 3 G. Award Plaintiffs and the Classes their expenses and costs of suit, including  
4 reasonable attorneys' fees to the extent provided by law;
- 5 H. Award Plaintiffs and the Classes pre-judgment and post-judgment interest at the  
6 highest legal rate to the extent provided by law; and
- 7 I. Award such further relief as the Court deems appropriate.

8 **JURY DEMAND**

9 Plaintiffs demand a trial by jury.

10  
11 DATED: March 23, 2020

Respectfully submitted,

12 /s/ Alex Straus

13 Alex Straus (SBN 321366)

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